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3 UNITED STATES DISTRICT COURT  
4 WESTERN DISTRICT OF WASHINGTON  
5 AT TACOMA

6 MARVIN SPENCER,

7 Plaintiff,

8 v.

9 STATE FARM MUTUAL  
AUTOMOBILE INSURANCE  
COMPANY,

10 Defendant.

CASE NO. C16-5885 BHS

ORDER GRANTING  
DEFENDANT'S MOTION FOR  
PARTIAL SUMMARY  
JUDGMENT

11 This matter comes before the Court on Defendant State Farm Mutual Automobile  
12 Insurance Company's ("State Farm") motion for partial summary judgment re: extra-  
13 contractual claims (Dkt. 11). The Court has considered the pleadings filed in support of  
14 and in opposition to the motion and the remainder of the file and hereby grants the  
15 motion for the reasons stated herein.

16 **I. PROCEDURAL HISTORY**

17 On September 9, 2016, Plaintiff Marvin Spencer ("Spencer") filed a complaint  
18 against State Farm in Pierce County Superior Court for the State of Washington. Dkt. 1-  
19 1. Spencer asserts claims for breach of contract and violations of the Washington  
20 Insurance Fair Conduct Act ("IFCA"), RCW Chapter 40.30. *Id.*, ¶¶ 4.1–5.3.

21 On October 18, 2016, State Farm removed the matter to this Court. Dkt. 1.  
22

1 On August 30, 2017, State Farm filed a motion for partial summary judgment.  
2 Dkt. 11. On September 18, 2017, Spencer responded. Dkt. 14. On September 22, 2017,  
3 State Farm replied. Dkt. 17.

## 4 II. FACTUAL BACKGROUND

5 On September 27, 2013, Kunthea Oul ran a stop sign and crashed into Spencer's  
6 vehicle. Dkt. 13, Declaration of Scott Wakefield, Exh. A at 2. In October 2015 Spencer  
7 settled his claim with Ms. Oul for her policy limit of \$50,000. *Id.*, ¶ 2. Spencer then  
8 asserted an underinsured motorist claim with his insurance company State Farm. On  
9 October 16, 2015, State Farm paid Spencer \$25,000 as the policy limit for a personal  
10 injury protection ("PIP") claim. *Id.*, Exh. D. State Farm, however, requested that  
11 Spencer hold the money in trust subject to "appropriate offsets or setoffs." Dkt. 15,  
12 Declaration of Amanda M. Searle ("Searle Decl."), Exh. 5.

13 On November 2, 2015, Spencer, via letter from his attorney, demanded State Farm  
14 tender the \$100,000 underinsured motorist policy limit. *Id.*, Exh. G. In response, State  
15 Farm requested that Spencer undergo an independent medical evaluation ("IME"). After  
16 some delay, the evaluation was scheduled for February 10, 2016. Dkt. 12, Declaration of  
17 Jayne Kreifel ("Kreifel Decl."), Exh. A. In late January or early February, Spencer  
18 cancelled the IME.<sup>1</sup> Spencer asserts that he cancelled the IME because State Farm had  
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21 <sup>1</sup> Spencer claims his counsel cancelled the IME on January 26, 2016 via phone message. Dkt. 14  
22 at 6. State Farm has submitted a letter from Spencer's counsel dated February 7, 2016, but referencing a  
phone message of February 2, 2016. Keifel Decl., Exh. 2.

1 failed to deliver a copy of his policy so that he could confirm IME requirement. Dkt. 14  
2 at 6.

3 On February 4, 2016, State Farm emailed a copy of Spencer's policy to Spencer's  
4 counsel. Searle Decl., Exh. 7.

5 On February 23, 2016, State Farm agreed to waive its PIP subrogation rights to  
6 \$3,967.44 and pay for some other fees. *Id.*, Exh. 6.

7 On April 22, 2016, Spencer filed an IFCA notice with the Washington Insurance  
8 Commissioner. Dkt. 14 at 6.

9 On August 15, 2017, Spencer underwent an IME with Dr. Hal Rappaport. Kreifel  
10 Decl., Exh. 5. At issue was whether Spencer's ulnar nerve transposition surgery was  
11 related to the motor vehicle collision. *Id.* at 3. Dr. Rappaport ultimately concluded that  
12 treatment for his ulnar nerve was not reasonable under the claim. *Id.* at 22.

### 13 **III. DISCUSSION**

14 As a threshold matter, some confusions exists regarding the actual claims in  
15 Spencer's complaint. State Farm moves for summary judgment on "all of [Spencer's]  
16 extra-contractual claims (for insurance bad faith and IFCA violations)" and argues that  
17 the only claim that should remain for trial is Spencer's breach of contract claim. Dkt. 11  
18 at 13. Spencer asserts that he "alleges two causes of action against State Farm, which  
19 relate to State Farm's failure to uphold its extra-contractual obligations to its insureds:  
20 violation of the Insurance Fair Conduct Act (IFCA), and the tort of common law  
21 insurance bad faith." Dkt. 14 at 8. Neither of these positions track the complaint wherein  
22 Spencer asserts only a claim for violations of IFCA and a claim for breach of contract.

1 Dkt. 1-1, ¶¶ 4.1–5.3. The only reference to bad faith is as follows: “Rather than agreeing  
2 to arbitration, State Farm has instead required the plaintiff to bring a lawsuit in Superior  
3 Court, an action which plaintiff alleges constitutes bad faith on the part of State Farm.”  
4 *Id.* ¶ 3.2. Thus, a fair and reasonable reading of the complaint states that Spencer’s bad  
5 faith tort claim, if one exists at all, is based solely on the allegation that State Farm  
6 refused to enter into arbitration. Neither party briefed this issue, and the Court declines  
7 to *sua sponte* consider the issue. Similarly, the Court declines to issue an advisory  
8 opinion on any other potential bad faith claim. Therefore, to the extent the Court  
9 addresses any claim, the Court will only consider Spencer’s IFCA claim.

#### 10 **A. Summary Judgment Standard**

11 Summary judgment is proper only if the pleadings, the discovery and disclosure  
12 materials on file, and any affidavits show that there is no genuine issue as to any material  
13 fact and that the movant is entitled to judgment as a matter of law. Fed. R. Civ. P. 56(c).  
14 The moving party is entitled to judgment as a matter of law when the nonmoving party  
15 fails to make a sufficient showing on an essential element of a claim in the case on which  
16 the nonmoving party has the burden of proof. *Celotex Corp. v. Catrett*, 477 U.S. 317,  
17 323 (1986). There is no genuine issue of fact for trial where the record, taken as a whole,  
18 could not lead a rational trier of fact to find for the nonmoving party. *Matsushita Elec.*  
19 *Indus. Co. v. Zenith Radio Corp.*, 475 U.S. 574, 586 (1986) (nonmoving party must  
20 present specific, significant probative evidence, not simply “some metaphysical doubt”).  
21 *See also* Fed. R. Civ. P. 56(e). Conversely, a genuine dispute over a material fact exists  
22 if there is sufficient evidence supporting the claimed factual dispute, requiring a judge or

1 jury to resolve the differing versions of the truth. *Anderson v. Liberty Lobby, Inc.*, 477  
2 U.S. 242, 253 (1986); *T.W. Elec. Serv., Inc. v. Pac. Elec. Contractors Ass’n*, 809 F.2d  
3 626, 630 (9th Cir. 1987).

4       The determination of the existence of a material fact is often a close question. The  
5 Court must consider the substantive evidentiary burden that the nonmoving party must  
6 meet at trial – e.g., a preponderance of the evidence in most civil cases. *Anderson*, 477  
7 U.S. at 254; *T.W. Elec. Serv., Inc.*, 809 F.2d at 630. The Court must resolve any factual  
8 issues of controversy in favor of the nonmoving party only when the facts specifically  
9 attested by that party contradict facts specifically attested by the moving party. The  
10 nonmoving party may not merely state that it will discredit the moving party’s evidence  
11 at trial, in the hopes that evidence can be developed at trial to support the claim. *T.W.*  
12 *Elec. Serv., Inc.*, 809 F.2d at 630 (relying on *Anderson*, 477 U.S. at 255). Conclusory,  
13 nonspecific statements in affidavits are not sufficient, and missing facts will not be  
14 presumed. *Lujan v. Nat’l Wildlife Fed’n*, 497 U.S. 871, 888-89 (1990).

## 15 **B. IFCA**

16       IFCA allows an insured who is “unreasonably denied a claim for coverage or  
17 payment of benefits by an insurer [to] bring an action in the superior court of this state to  
18 recover the actual damages sustained.” Wash. Rev. Code § 48.30.015. In *Perez–*  
19 *Crisantos v. State Farm Fire and Casualty Co.*, 187 Wn.2d 669 (2017), the Washington  
20 Supreme Court considered whether an insured can sue his insurance company under  
21 IFCA for Washington regulatory violations. The court held that insureds have no private  
22 cause of action under IFCA against insurers for violating the Washington Administrative

1 Code (“WAC”). *Id.* at 680–83. “The insured must show that the insurer unreasonably  
2 denied a claim for coverage or that the insurer unreasonably denied payment of benefits.  
3 If either or both acts are established, a claim exists under IFCA.” *Id.* at 683 (citing  
4 *Ainsworth v. Progressive Cas. Ins. Co.*, 180 Wn. App. 52, 79 (2014)).

5 In this case, the majority of Spencer’s response is devoted to purported violations  
6 of the WAC. *See* Dkt. 14 at 9. Because Spencer does not have a private cause of action  
7 for violations of the WAC, the majority of his arguments are without merit. *Perez–*  
8 *Crisantos*, 187 Wn.2d at 680–83. To the extent that Spencer argues that he was  
9 unreasonably denied payment of benefits, he fails to meet his burden. Disparity in claim  
10 value does not establish a claim for unreasonable denial of benefits. *Id.* at 684. “There  
11 has to be something more.” *Id.* (citing *Am. Mfrs. Mut. Ins. Co. v. Osborn*, 104 Wn. App.  
12 686, 701 (2001)). At most the evidence shows a disparity in claim value without the  
13 something more.

14 In support of his claim, Spencer argues that “this case goes beyond a mere dispute  
15 over the value of a personal injury claim.” Dkt. 14 at 16. Spencer contends that State  
16 Farm’s failure to fully waive its PIP subrogation rights is the “something more” that  
17 pushes these circumstances beyond a mere claim dispute. Spencer’s argument is without  
18 merit. It is not unreasonable for an insurer to reserve its rights to subrogation pending  
19 further investigation of a claim. This is especially so when significant medical issues are  
20 still in dispute. Moreover, even if Spencer is correct, then an insured would have an  
21 IFCA claim against an insurer every time an insurer pays a claim subject to setoffs or  
22 offset. Such a rule lacks authority and is otherwise illogical. Thus, the Court concludes

1 that Spencer has failed to show any circumstances beyond a mere claim value dispute and  
2 grants State Farm's motion for partial summary judgment.

3 **C. Continuance**

4 "If a nonmovant shows by affidavit or declaration that, for specified reasons, it  
5 cannot present facts essential to justify its opposition, the court may . . . defer  
6 consideration of the motion." Fed. R. Civ. P. 56(d)(1).

7 If the Court is inclined to grant State Farm's motion, Spencer requests a "56(f)  
8 continuance" so that he may conduct additional discovery on State Farm's handling of his  
9 claim. Dkt. 17 at 7.<sup>2</sup> Spencer, however, fails to submit an affidavit or declaration in  
10 support of this request. Therefore, the Court denies Spencer's request for deferring  
11 consideration of the motion.

12 **IV. ORDER**

13 Therefore, it is hereby **ORDERED** that State Farm's motion for partial summary  
14 judgment re: extra-contractual claims (Dkt. 11) is **GRANTED**.

15 Dated this 16th day of October, 2017.

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17   
18 BENJAMIN H. SETTLE  
United States District Judge

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22 <sup>2</sup> The Court assumes Spencer meant a 56(e) deferral of consideration of the motion because 56(f)  
governs judgment independent of the motion.